

BAYTREE ASSOCIATES, INC.,

Plaintiff,

v.

DANTZLER, INC.,

Defendant and
Third-Party Plaintiff,

v.

ORACLE USA, INC.,

Third-Party Defendant.

THIS MATTER IS BEFORE THE COURT on the parties' request for assistance in resolving a discovery dispute pursuant to the Case Management Order (Document No. 59 at (1)(i)). This matter has been referred to the undersigned Magistrate Judge pursuant to 28 U.S.C. §636(b) and the Case Management Order, and immediate review is appropriate.

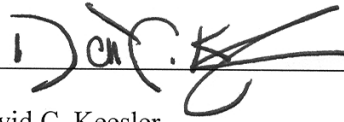
The issue before the Court is whether Defendant Dantzler should be required to produce a specific email communication between Antonio Godinez and Lino Morejon dated November 7, 2006. Defendant Dantzler contends the document in question is protected work product prepared in anticipation of litigation.

Having carefully considered the arguments of the parties in a telephone conference on August 12, 2008, and after an *in camera* inspection of the document in question, the undersigned finds that the above-mentioned document is not subject to work product protection and must be produced immediately.

The Federal Rules of Civil Procedure provide that “[o]rdinarily, a party may not discover documents and tangible things that are prepared in anticipation of litigation or for trial by or for another party or its representative.” Fed.R.Civ.P. 26(b)(3)(A). After hearing Defendant Dantzler’s position and reviewing the document in question, the undersigned is convinced that Defendant Dantzler has not satisfied its burden of establishing that this document is work product prepared in anticipation of litigation or for trial. See Ennis v. Anderson Trucking Service, Inc., 141 F.R.D. 258, 259 (E.D.N.C. 1991).

IT IS, THEREFORE, ORDERED that Defendant Dantzler immediately make the email document in question available for review by counsel for the other parties in this lawsuit.

Signed: August 13, 2008



David C. Keesler
United States Magistrate Judge

